

SCOTTISH LAW COMMISSION

Memorandum

on

Applications for Planning Permission

[ This Memorandum is circulated for comment and criticism and does not represent the concluded views of the Scottish Law Commission.]

1. The Scottish Law Commission have received from the legal profession representations which exhibit dissatisfaction with the law relating to applications to a planning authority for permission to develop property or to change its use. In particular there is dissatisfaction that such an application can now be made, and granted, without any knowledge of the application coming to the notice of members of the community who might consider themselves entitled to make observations upon it.
2. No question relating to private rights of property is here raised. For example, if A makes a planning application to develop his property in a certain way, B, his neighbour (whether a conterminous proprietor or not) has no title or interest to object to the development on the ground that it is deleterious to his, B's, property. The development either infringes one of B's rights of property or it does not. If it does, B can prevent it without any reference to the code of Planning Law. The prevention of infringements of B's rights of property without notice is taken care of, not by the planning code, but by the building code. The Building (Scotland) Act 1959 (c.24)<sup>1</sup> empowers the Secretary of State to make regulations for inter alia "service on such persons as may be specified

<sup>1</sup> S. 2 and Sch. 3 para. 2

(including conterminous proprietors) of applications, decisions and notices relating to matters coming before a buildings authority". In exercise of those powers there were made the Building (Scotland) Act 1959 (Procedure) Regulations 1964<sup>1</sup> which provide by regulation 6(1) that "an applicant for a warrant or an amendment of a warrant shall, before lodging the application with the clerk to the buildings authority, serve a service copy of the application on every other affected proprietor and on the master of works." By regulation 6(4) "affected proprietor" in relation to a building includes any person who is

- "(a) an owner of the building or of the site thereof;
- (b) an owner of the conterminous land, but only if any part of such land is within 100 yards of any part of the building or of the site thereof, and
- (c) an owner of land, part of which is within 15 feet of any part of the building or site thereof."

3. There is one class of development in relation to which applications require public advertisement. By section 35 of the Town and Country Planning (Scotland) Act 1959 (c.70), it is provided "(1) An application made after the commencement of this Act for planning permission for development of any class to which this section applies -

- (a) shall not be entertained by the local planning authority unless it is accompanied by a copy of a notice of the application, in such form as may be prescribed by a development order, and by such evidence as may be so prescribed that the notice has been published in a local newspaper circulating in the

<sup>1</sup> S.I. 1964/712 (1964 II, p. 1432)

locality in which the land to which the application relates is situated; and

- (b) shall not be determined by the local planning authority before the end of the period of twenty-one days beginning with the date appearing from the evidence accompanying the application to be the date on which the notice was published . . . ."

By subsection (3) authority was given for a development order to be made designating the classes of development to which the section applies. The types of development now by order designated<sup>1</sup> are public conveniences, the disposal of waste or refuse, sewage disposal, slaughterhouses, knackers' yards and a number of categories of entertainment buildings. In the case, accordingly, of application for development of this class, the public in general is given notice by advertisement, but it will be observed that no specific power is given to anyone, be he a conterminous proprietor or not, to object to the granting of the application. This, however, does not mean that the provision has no utility. Subsection (4) of section 35 requires the local planning authority to take into account any representations received by them within the period of 21 days mentioned above. Thus, upon the emergence of a proposal to effect a development of this class, opportunity is given for the mobilisation of public opinion if necessary, and the bringing to bear of that public opinion upon the elected members of the planning committee who have the responsibility for giving the question their administrative consideration. This may be a valuable, as it certainly is a legitimate, exercise of democratic rights.

<sup>1</sup> The Town and Country Planning (General Development)(Scotland) Order 1959, S.I. 1959/1361 (1959 II, p. 2653), article 8(1).

4. The Scottish Law Commission have been informed that the idea that third parties, and particularly neighbours, should be at least given notice of impending development has frequently been advanced, but despite close and repeated examination under successive administrations it has always been decided that it would be wrong to adopt it. The reasons given may be summarised as follows -

(1) Whereas the expediency of granting a warrant under the Building Code depends upon objectively ascertainable facts, the question of permitting a development from a planning point of view involves matters of opinion and subjective judgements which are the function of the elected members, to be exercised by them subject to the ultimate control of the electorate at large.

(2) If neighbouring proprietors and others were invited to make observations upon planning applications, the planning process would become even more complicated and cumbersome than it is now.

(3) This would mean an unjustifiable interference with the right of the individual to develop his property as he thinks fit, subject only to the public interest as interpreted by those who have been entrusted with the duty of interpreting it.

(4) In many cases members of the general public, other than conterminous proprietors, would weigh in with objections to applications based upon their own conceptions of public interest and amenity, whereas these are matters which have been confided to the elected members of the local authority.

5. There is obviously considerable weight in these arguments, especially from what may be called the theoretical administrative point of view. There are, however, at least two considerations which they do not deal with.

6. Firstly, it is, perhaps unfortunately, easy to exaggerate the detailed attention which can, for practical reasons, be brought to bear upon individual applications for planning permission by members of a local planning authority. In most cases there can be no doubt that, should no objection to the application be raised by the officials of the authority, the application will be granted more or less automatically. It is, in the general case, perfectly proper that that should be so, but it is in the special case, where an application is likely to raise strong local feelings if presented as a fait accompli, that the prior notice may be required. For the state of public opinion, whether of fairly immediate neighbours or of a substantial part of the community as a whole, is part of the information which the elected representative ought to have before him when he is making up his mind on the application. Very often, as it seems, he does not. Of course, as has been pointed out, in the huge majority of applications public opinion is simply silent, but it is in the small minority that there are felt misgivings, which can even have the effect of shaking the general faith in what should be a democratic process.

7. Secondly, the practical difficulties which are said to be in the way of a general requirement for the giving of notice are less formidable when it is realised that they have been surmounted elsewhere. In the Republic of Ireland, by the Local Government (Planning and Development) Act 1963 (Permission) Regulations 1964 (S.I. No. 221 of 1964) it is provided by article 9 "(1) Prior to the submission to a planning authority of an application for a permission for development, for an approval or for a permission for retention of a structure, the applicant shall give public notice of his intention to apply for a permission or an approval, by publication in a newspaper circulating in the district in which the land or structure is situate or by the erection or by the fixing of a notice on the

land or structure." The rest of the article deals with the detailed requirements of the advertisement and notice. Appendix 1 hereto is a copy of a portion of a column from the "Irish Times" newspaper dated January 12th 1967 which gives examples of advertisements for planning applications.

8. In the London Borough of Camden notice is regularly given to occupiers of adjoining premises when application for permission to carry out development has been received. This is done in cases where the proposed development is likely to affect the adjoining proprietors and where it appears to comply with known standards and is likely to be regarded favourably. The notice is not given under any statutory requirement or other authority since, as it is understood, the planning code of England is the same in this respect as that of Scotland. Our information is, however, that apart from being worthwhile from a public relations viewpoint the notice minimises subsequent difficulties and does not result in any delay in dealing with the application as enquiries can be made simultaneously with consultations with other authorities, statutory undertakers, etc. The form of notice used by the Planning Department of the London Borough of Camden is at Appendix 2.

9. Furthermore, if advertisement of applications made for the classes of property referred to in paragraph 3 above in relation to section 35 of the Town and Country Planning (Scotland) Act 1959 is practicable, so, it would seem, would be advertisements relating to other or all classes. It is understood that the types of development now designated under the authority of section 35 have been selected on the ground of their "bad neighbour" characteristics. It is arguable that unsightly or inappropriate developments also partake of that characteristic. It may be further observed that in the case of some at least of the properties in the designated class there are regulatory provisions, quite apart from planning provisions, which would control their siting and erection.

10. It is therefore suggested that the proposals which have from time to time been made for requiring applicants for planning permission to give notice by advertisement of their intentions should be reconsidered in the light of these observations, with particular reference to the question whether section 35 of the last mentioned Act should no longer be confined in its effects to the class of property designated in the Town and Country Planning (General Development)(Scotland) Order 1959. It is not suggested that the requirement to give notice should confer upon any recipient the right (apart from making such representations as he thinks fit) to intervene in such applications, or to demand a formal inquiry in relation thereto.

5th May, 1967

APPENDIX 1

Irish Times

January 12<sup>th</sup> 1967

**PLANNING APPLICATIONS**

**I**NNSFIELD, Co. Meath. Notice is hereby given that Patrick Gorry, Esq., intends to apply for permission to erect a filling station at Innsfield and outline permission to erect a house at Innsfield.

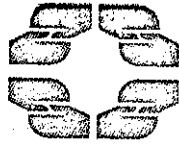
**M**OATE, Co. Westmeath. Application is being made to Westmeath County Council for permission to carry out alterations to the premises of the National Bank of Ireland Ltd., Moate.

**D**UBLIN—Application is being made to the Dublin Corporation for outline permission to rebuild factory and warehouse building at 20/21 South William Street for Emmer Estates Ltd.

**D**UBLIN 2—18/19 Stn. William Street. An application is being made on behalf of Messrs. Houston & Morrow Ltd. for outline permission to rebuild their premises.

**C**O. LOUTH. The Boyne Valley Honey Co. Ltd. propose to erect a packing store at Francis Street, Drogheda.





Planning Department

Old Town Hall  
197 High Holborn  
London, WC1  
Telephone : Holborn 3411

B. Schlaffenberg, Dr. Arch. (Rome), Dip. TP.  
Planning Officer MTPI

Date

Your reference

Our reference

Dear Sir(s) or Madam,

Town and Country Planning Act, 1962  
London Government Act, 1965

I have received an application for permission to carry out the undermentioned development at the property referred to:-

Property

Proposed Development

The application has been considered and it complies with the development plan proposals and appropriate planning standards.

If you, as an occupier of adjoining premises, wish to put forward any information or objection which you think should also be taken into account by the Committee in considering the application you should advise this Department in writing within fourteen days.

Copies of the application and drawings relating to it can be inspected at this office.

Yours faithfully,

Planning Officer

All communications to be addressed to the Planning Officer.